IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Misc. No. 10666-M of 2007

DATE OF DECISION : 20.02.2007

Ajay Sharma

.... PETITIONER

Versus

Ahuja Yarn Agency

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. Yogesh Goel, Advocate,
for the petitioner.

Petitioner Ajay Sharma, who is facing criminal proceedings as an accused in the criminal complaint filed by the respondent under Section 138 of the Negotiable Instruments Act, has filed this petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as `the Code') for quashing of order dated 1.2.2007, passed by Judicial Magistrate Ist Class, Ludhiana, whereby the application filed by him under Section 315 of the Code for permitting him to examine himself as defence witness, has been dismissed, while observing that the petitioner filed the said application, after closing of the evidence at the fag end of the trial, with intention to delay the proceedings.

2. I have heard the arguments of learned counsel for the petitioner and gone through the impugned order.

3. In this case, evidence of the petitioner was closed by order of the court on 14.8.2006, when in spite of several opportunities granted to him, he could not complete his defence evidence. The said order was challenged by the petitioner in this court by filing Criminal Revision No. 1869 of 2006, which was also dismissed on 15.9.2006. Thereafter, when the case was at the stage of arguments, petitioner filed the instant application

under Section 315 of the Code for examining himself as a defence witness alleging therein that he neither received the alleged amount from the complainant nor issued the cheque in question to him in order to discharge the said liability. It is alleged that actually, the cheque in question was lost in the year 2004 and an application to the bank intimating the said fact is already on the record as Ex.DA. It is stated that the petitioner had disclosed these facts to his previous counsel, but when the petitioner engaged new counsel, he was told that his evidence has already been closed by order of the court and, therefore, he wants to examine himself to prove the said fact. The application has been dismissed by the trial court vide the impugned order.

4. It is true that the accused has a right to give evidence on oath in disproof of the charge and he can be a defence witness, but in the instant case, when defence evidence of the petitioner was closed by order of the court and the said order was affirmed by this court in revision filed by him, now at the fag end of the trial, he cannot be permitted to examine himself as defence witness under Section 315 of the Code, as in my opinion, allowing the said application will amount to reviewing of the earlier order.

5. In the facts and circumstances of the case, particularly when the trial court has observed that the present application has been filed by the petitioner intentionally only to delay the matter on the plea that he has changed his counsel and has come to know that his evidence has been closed by order of the court, I do not find any ground to interfere in the impugned order, passed by the trial court.

6. Dismissed.

February 20, 2007 **(SATISH KUMAR MITTAL)**
ndj **JUDGE**